
OPINION OF THE PUBLIC ACCESS COUNSELOR

KENDRA J. OWEN,
Complainant,

v.

EVANSVILLE POLICE DEPARTMENT
Respondent.

Formal Complaint No.
18-FC-93

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Evansville Police Department (“Department”) violated the Access to Public Records Act¹ (“APRA”). The Department responded to the complaint via telephone. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 13, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Kendra J. Owen (“Complainant”) claims the Evansville Police Department violated the Access to Public Records Act by levying an excessive charge for dash and body camera footage.

On May 19, 2018, Owen made a public records request for dash and body camera footage from three separate interactions with officers involving herself. The Department responded by proposing a fee of \$150.00 per recording or \$600.00 for copies of the total footage. Owen takes exception to the fee as excessive.

Although the Department did not file a written response to the complaint with this Office, it acknowledged the policy of charging \$150 as a flat rate and its intention to revisit that policy going forward.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Evansville Police Department is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Department’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indiana code section 5-14-3-8(g)(1) sets the fee schedule for law enforcement officer body worn camera footage. It is simply the agency's direct cost of supplying that information not to exceed one hundred fifty dollars (\$150). Direct cost is defined by Indiana Code section 5-14-3-2(d):

(d) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

These factors play into the calculation of cost on a request-by-request basis, however, the Evansville Police Department charges that as a flat fee regardless of the amount or sensitivity of footage.² It should also be noted that subsection (d)(1) would not apply as the software and hardware already exists and has been paid for and is not specifically developed for a particular individual request. Only the labor required for retrieving and redacting (if applicable) may be charged along with the cost of a CD or thumb drive to provide the information.

It very well may be that certain requests would rise to the sum of \$150.00 but certainly not every single piece of footage. By that logic, a single frame from a body worn camera would cost as much as a shift's worth of footage. The \$150

² Based on the information provided, it is unclear how much total footage in terms of time is involved with these specific requests.

direct cost threshold is a cap, however, and not a recommendation.

Because direct cost is expressly defined, the \$150 flat fee appears to be arbitrary but the Department has expressed its willingness to revisit the issue in this case and in its flat rate going forward.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor